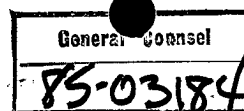


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United States Government
MEMORANDUM

**Office of
Government Ethics**

JUL 15 1985

Subject: **Recent Conflict of Interest Prosecutions**

From: **David H. Martin**
Director

A handwritten signature in cursive script that reads "David H. Martin".

To: **Designated Agency Ethics Officials**

In February of 1984, and again in September, OGE sent to all the DAEOs reports summarizing recent conflict of interest prosecutions around the country. In our continuing effort to keep you informed of such cases, we have prepared a third report, covering cases decided in 1984 as well as earlier cases that did not appear in either of our previous reports.

In the interest of fairness, we have omitted the names and other identifying information from our report. If you find the facts of any of the cases relevant to a matter of concern to you and would like further information about it, please do not hesitate to contact this Office.

Attachment

1. The defendant was charged with a violation of 18 U.S.C. §208(a) for negotiating or having an arrangement concerning prospective employment with persons who had financial interests in contracts which were before him in his capacity as a United States Army employee. At the time of the negotiation for employment, the company had at least one million dollars' worth of contracts with the U.S. Army Missile Command where the defendant worked. He was indicted on June 8, 1984, and pled guilty at the arraignment.

The defendant received a two-year suspended sentence after being placed on probation for three years and paying a \$4,000 fine. He has not appealed the conviction.

2. The defendant was an Employee Compensation Officer at the Anniston Army Depot. In 1979, the widow of a Treasury Agent filed for widow's benefits under the Federal Employee's Compensation Act. The defendant contracted with the widow and her attorney to assist in making and processing the claim. When the widow's attorney asked the defendant whether this arrangement would create a conflict of interest, he indicated that it would not, although he admitted that he was the Compensation Officer.

The defendant was indicted for violating 18 U.S.C. §205. Pursuant to plea negotiations, he entered a plea of guilty to violating 18 U.S.C. §1003, fraudulently and knowingly endeavoring to convey a share of the public stocks of the United States of a value less than \$100 to another. The indictment was dismissed, but he was fined \$1000 and placed on probation for one year.

3. The defendant was an engineering technician at Fort Rucker, Alabama. He was responsible for determining the amount and type of work to be done under a building maintenance contract between the Army and a certain government contractor. In 1981, he entered an agreement with the contractor under which he would provide certain materials used in the contract which he supervised. During a six-month period, a corporation established by the defendant and owned by his wife received approximately \$90,000 for materials furnished to the contractor and used in work recommended and approved by the defendant.

On May 31, 1983, the defendant was indicted for violating 18 U.S.C. §208(a). After entering a plea of guilty, he was fined \$10,000 and ordered to serve six months in prison, with 18 months of probation. There was no appeal.

4. In this companion case to the preceding case, the corporation and one of its officers were charged on February 15, 1984, with two violations of 18 U.S.C. §203(b). One charge related to the agreement between the engineering technician and the defendants, which was the subject of the previous case. The other charge concerned a separate agreement, unknown at the time the technician was charged, whereby the defendants paid him \$15,000 in cash for assisting in the preparation of claims submitted pursuant to the Army's contract with the corporation.

The charges against the corporation's officer were dismissed upon the corporation's plea of guilty to the count relating to the \$15,000 agreement. The other count was dismissed, and the corporation was fined \$10,000. There was no appeal.

5. In mid-1979, a disgruntled former government employee provided the FBI with information about an accounting firm that had acquired numerous audit contracts for various federal agencies by falsifying the proposals for the audit contracts. The former employee also claimed that a partner in the accounting firm had worked on audits of his government agency while still employed with the government. The FBI's investigation revealed that the accounting firm's proposals for audit contracts consistently listed employees that the firm did not have and attributed to those employees experience, especially in the area of governmental audits, that the firm did not have.

A nine-count indictment on violations of 18 U.S.C. §1001, false statements, was returned on June 30, 1981. Each count involved a separate proposal for an audit contract to a federal agency. All three partners in the accounting firm were named in the indictment. Conflict of interest allegations against federal employees were not borne out.

In November 1981, a U.S. district court judge ordered the dismissal of the indictment due to the government's failure to record all proceedings before the grand jury. The Solicitor General did not authorize an appeal. Before the case could be submitted to a new grand jury, an agreement was reached whereby the firm would be debarred from handling or bidding for federal audit contracts.

6. One of the defendants owned a business that distributed egg rolls. Another defendant who was a Chief Petty Officer in the Navy, worked in the commissary at a local Navy base. The naval officer approached a civilian employee of the Navy who managed the commissary, offering him \$200 to stock the commissary with the egg rolls. The civilian employee reported the matter to the Naval Investigative Service.

During the course of a joint NIS-FBI investigation, the civilian, fitted with a tape recorder, met with the defendants. At the meeting, they discussed the \$200 bribe. The defendants asked the civilian if he could arrange for the entry of the goods into other commissaries in the region.

As a result of this conversation, the civilian arranged a meeting at which he, one of the defendants, and the government employee's supervisor, who controlled regional purchases, were present. During the videotaped meeting, the defendant gave \$200 to the civilian and promised to pay an additional \$200 for each commissary opened to her products.

The defendants pled guilty to two counts of violating 18 U.S.C. §209. Each was placed on probation and assessed \$1,600 in fines.

7. The defendant was the president and sole owner of a concrete company. The concrete company had been employed as an independent subcontractor by a construction company that was a major subcontractor at a new Naval facility. The construction company was also employed by the U.S. Testing Company to conduct independent specifications compliance testing, including subgrade soil compaction testing, required by government contract specifications.

In April of 1984, during testing procedures pursuant to the contract, the defendant was present while a government employee was overseeing the testing conducted by the U.S. Testing Company. The defendant asked the government employee to scratch in the dirt the amount he would have to pay in order to get the employee to cause the subsoil compaction test to pass inspection. The employee, acting undercover, drew "200" in the dirt. Approximately one hour later, the defendant gave the government employee \$200 in \$20 bills.

The defendant was indicted on one count of conspiracy to offer a bribe and two counts of offering a bribe, in violation of 18 U.S.C. §§371 and 201(b)(3). On August 7, 1984, the defendant pled guilty to a violation of 18 U.S.C. §209. Upon having his sentence suspended, he was given two years' probation under special conditions and ordered to pay a fine of \$5,000 within one year.

8. During an IRS audit in 1981, the defendant offered the tax auditor \$400 to fix the audit of his 1978 through 1980 tax returns. The defendant subsequently paid \$300 to have the audit fixed and a "No Charge" report issued.

The defendant entered a plea of guilty to an information charging a violation of 18 U.S.C. §209(a). On October 1, 1982, the defendant was placed on three years' probation.

9. The defendant was a contracting officer with the United States Army. In August of 1983, he was charged with conspiracy and with a conflict of interest under 18 U.S.C. §208. The indictment alleged that he had entered into a secret prospective employment contract with a government contractor performing a laundry service contract for which the defendant was the contracting officer. After the parties had entered into the prospective employment agreement, the laundry service contract came up for competitive rebidding. The corporation and its owner were charged with bribery of the defendant.

In April of 1984, the defendant pleaded guilty to a conflict of interest and testified at the trial of the corporation and its owner, who were convicted of bribery. The defendant received three years' probation and was assessed a \$5,000 fine. The U.S. Attorney found 18 U.S.C. §208 a convenient vehicle to use in this case because it did not require the government to prove that the contracting officer did anything in exchange for the employment contract.

10. The defendant, a civilian employee of the Department of Defense, was indicted under 18 U.S.C. §203(a), for the illegal receipt of compensation. A defense contractor was indicted for illegally paying compensation to the employee while he was a government employee and while he was reviewing the contractor's work. The compensation consisted of payment of the employee's expenses, valued at \$400, for attending a three-day conference.

The defendant pleaded guilty to accepting a supplementation of salary under 18 U.S.C. §209(a), pursuant to a plea agreement. He was sentenced to one year of probation, ordered to pay a \$500 fine, and directed to contribute 300 hours of charitable work.

The contractor was convicted of supplementing a government employee's salary under 18 U.S.C. §209(a). The contractor was sentenced to three years' probation and fined \$3,000. In addition, the corporation and its officers were convicted of fraud charges. Their conviction is currently on appeal.

11. The defendant gave \$200 to an IRS tax auditor to influence his audit of the defendant's 1980 tax return. The defendant pled nolo contendere to a one-count information and was placed on probation for three years, with the condition that he serve the first week in custody.

12. The defendant was a clerk in the United States District Court for the Northern District of Illinois. He pled guilty under 18 U.S.C. §209 on charges of accepting money on two different occasions for certifying documents. He was placed on probation.

13. The defendants pled guilty to a violation of 18 U.S.C. §209 for paying a gratuity to an IRS auditor. Both defendants were placed on probation for one year and fined \$2,000.

14. A former revenue agent of the Internal Revenue Service was convicted of demanding a bribe under 18 U.S.C. §201(a) from a taxpayer he was assigned to audit. He was sentenced to prison and compelled to testify pursuant to court ordered use immunity. He revealed the names of other taxpayers he had audited and from whom he had demanded money for favorable consideration.

Charges of bribery under 18 U.S.C. §201(b) and of supplementing the income of a federal employee under 18 U.S.C. §209(a) were returned against five individuals. Pursuant to a plea agreement, each defendant received a probationary term or a suspended sentence of one year. All but one were fined, with the fines ranging from \$500 to the statutory maximum of \$5,000. In each case, the government dismissed the bribery count. The following is a further breakdown of the cases:

The owner of a variety store entered a plea of guilty to one count of a criminal information charging him with making approximately \$2,000 in payments to the revenue agent to influence a tax audit. He was given a one-year suspended sentence.

The owner of a school for driving instructors entered a plea of guilty to a criminal information charging him with making approximately \$3,500 in payments to the revenue agent to influence a tax audit. He was sentenced to pay a \$1,000 fine, which was suspended for a one-year probationary period.

A contractor entered a plea of guilty to an indictment charging him with making a total of \$2,000 in payments to the revenue agent to influence a tax audit. In addition to being fined \$2,000, he was sentenced to a one-year prison term, which was suspended for a one-year probationary period.

A salesman and his accountant entered pleas of guilty to a criminal indictment charging them with making a \$4,000 payment to the revenue agent. The salesman was being audited by the IRS, and the accountant represented the taxpayer during the audit.

The salesman, who cooperated with the government, received a one-year probationary term and was fined \$500. The accountant was placed on probation for one year and fined \$5,000.

15. The defendants were charged with bribery under 18 U.S.C. §201(f) and (g), and conspiracy under 18 U.S.C. §371. The defendants had assisted an underwriter in the Small Business Administration's Surety Bond Program, in return for the underwriter's influence in getting a surety company to write bonds for two Cleveland excavating contractors in 1973 and 1974. Both the underwriter and the contractors were acquitted in a 1977 trial when the trial judge ruled that the intercepted conversations of the defendants, which discussed the bribery in detail, should be suppressed because of the FBI's surreptitious entry into the defendant's place of business to place the microphones. That issue went to the United States Supreme Court and was decided in the Government's favor.

The intercepted conversations indicated that the underwriter had agreed to assist two Cleveland excavating contractors in obtaining surety bonds. He sought the assistance of a friend, one of the defendants, in order to collect the \$18,000 which the Cleveland contractors had promised him in return. The friend enlisted the aid of the second defendant, who then contacted a pair of Teamster officials in the Cleveland area. They asked the Teamsters to use union pressure to collect the \$18,000. The bribe was to be paid off on December 14, 1973, and, although the FBI missed the payoff, over \$18,000 in cash was removed from the bank accounts of the contractors on that date.

On March 12, 1981, the defendants were sentenced to three years in the custody of the Attorney General for aiding and abetting the bribery of a federal official in violation of 18 U.S.C. §§201(f) and (g), and for conspiracy in violation of 18 U.S.C. §371.

16. The defendant was employed by the widow of a man who died owning a substantial amount of real estate. The widow agreed to pay \$20,000 to IRS employees charged with evaluating the properties for estate tax purposes, in return for their certification of lower evaluations in order to reduce the estate taxes. The defendant assisted the widow by making one \$5,000 payment to a supervisor in the IRS evaluation section.

On February 27, 1979, the defendant pleaded guilty to an information charging one count of violating 18 U.S.C. §209(a). On May 25, 1979, he was sentenced to a fine of \$5,000.

17. The defendant offered to procure some clothing and/or alterations for an IRS Revenue Agent who was investigating the defendant's non-payment of withholding taxes.

After pleading guilty to a one count information charging a violation of 18 U.S.C. §209(a), the defendant was sentenced on November 30, 1984, to one year of probation, with the special condition that he cooperate with the IRS in resolving the tax matter.

18. An elderly woman stated that she sought assistance from the Social Security Administration sometime in the summer of 1983. The defendant, a GS-9 Claims Representative at the Social Security Administration, handled her claim for benefits.

The defendant informed the woman that she would have to pay him \$1,000 when she received her benefit check. Sometime in early October of 1983, after all of the paper work on her claim had been completed, she received a call from him. He advised her that sometime during that week he would come over to her apartment to pick up the check. He did so, and the woman gave him a personal check for \$1,000. She believed that the \$1,000 was a fee she had to pay to obtain her Social Security benefits.

On August 15, 1984, the grand jury returned a one-count indictment against the defendant for violating 18 U.S.C. §201(g). On November 9, 1984, the court placed the defendant on probation for three years and ordered restitution to the woman in the amount of \$1,000, to be paid within the first twelve months of the probationary period.